

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ROBERT MICHAEL HUGHES,

Petitioner,

v.

ORDER

Civil File No. 10-450 (MJD/SRN)

WARDEN JOHN KING,

Respondent.

Robert Michael Hughes, pro se.

Kimberly R. Parker and Matthew Frank, Minnesota Attorney General's Office,
Counsel for Respondent.

On April 20, 2010, the Court issued an Order adopting the Report and Recommendation dated March 4, 2010. [Docket No. 12] The Order denied Petitioner's application for a writ of habeas corpus [Docket No. 1], Petitioner's application for leave to proceed in forma pauperis [Docket No. 2], Motion for Time Extension or Tolling for 28 U.S.C. § 2254 Filing [Docket No. 4], and Motion of Response to State of Minnesota Rebuttal Letter Dated April 7, 2010 [Docket No. 9]. The Court dismissed this action with prejudice.

An applicant for a writ of habeas corpus may not take an appeal unless a judge issues a certificate of appealability under 28 U.S.C. § 2253(c). The Court will grant a certificate of appealability only where the petitioner has made a substantial showing of the denial of a constitutional right. See id.; Tiedeman v. Benson, 122 F.3d 518, 523 (8th Cir.1997). To meet this burden, the petitioner must show “that the issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings.” Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994) (citation omitted).

When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 484 (2000).

The Court held that Petitioner’s § 2254 motion was time-barred. The Court concludes that reasonable jurists would not find the procedural issues raised in Petitioner’s § 2254 motion debatable, or that some other court would decide this § 2254 motion differently. The Court therefore declines to grant a certificate of appealability.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**
HEREBY ORDERED that:

A certificate of appealability shall not issue.

Dated: May 7, 2010

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court